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**IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK**

STEPHEN GANNON,

Plaintiff,

vs.

124 EAST 40TH STREET LLC, JOHN
DOE 1-X, persons yet unknown, Limited
Liability Companies, Partnerships,
Corporations 1-X, entities yet unknown,

Defendants.

**MOTION TO STRIKE
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT FILING**

AND

**MOTION TO EXTEND THE TIME FOR
PLAINTIFF'S RESPONSE**

Civil Action No. 1:22-cv-361-LGS

Plaintiff STEPHEN GANNON, by and through his attorney Adam Ford of Ford & Huff LC, hereby moves this Court to strike Defendant 124 40TH STREET LLC'S Motion for Summary Judgment (Dkt. No. 104) for failure to comply with the Court's Summary Judgment Motions and, further, to extend the time for Plaintiff to reply.

MOTION TO STRIKE DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

FILING (DKT. NO. 104)

Plaintiff files this motion to strike Defendant's motion for summary judgment filing (Dkt. No. 104) because the filing does not follow the Court's rules and practices for summary judgment motions in at least three substantive ways.

First, Defendant's Rule 56.1 Statement of Material Facts (Dkt. No. 104-2) is replete with exhibits, despite the Court's clear guideline that "No exhibits may be annexed to a Rule 56.1 statement or response" (Individual Rules and Procedures for Civil Cases, Judge Lorna G. Schofield, April 25, 2023, p.13).

Second, the Court's Summary Judgment Motion guidelines also indicate that the "movant shall provide all other parties with an electronic copy, in Microsoft Word format, of its Rule 56.1 statement" (Individual Rules and Procedures for Civil Cases, Judge Lorna G. Schofield, April 25, 2023, p.13). Plaintiff never received an electronic copy of Defendant's Rule 56.1 statement.

Third, Defendant's filing is replete with irrelevant material relating to Plaintiff's counsel and non-related cases. Rule 56.1 clearly states that the filing should "include only those facts that the movant genuinely believes to be material and undisputed." To highlight one example among many, the fact that nearly a decade ago Plaintiff's counsel represented his mother in a number of ADA-related cases in Utah cannot reasonably be considered material to whether or not the premises subject of this lawsuit, a large midtown Manhattan retail and office building, is in violation of the ADA and New York state and city statute. Responding to such irrelevancies would necessitate Plaintiff to likewise violate Rule 56.1.

As a result of Defendant not following the Court's summary judgment motion guidelines, Plaintiff is materially hindered in fully and accurately responding while following the Court's rules. For this reason, Plaintiff asks the Court to strike the Defendant's filing (Docket No. 104) and require it to refile a motion that complies with the Court's Rules.

MOTION TO EXTEND TIME FOR PLAINTIFF'S RESPONSE

Pursuant to the Court's Order on November 6, 2023 (Dkt. No. 100), "By December 6, 2023, Plaintiff shall file its opposition." However, in conjunction with Plaintiff's MOTION TO STRIKE DEFENDANT'S FILING OF MOTION FOR SUMMARY JUDGMENT (DKT. NO. 104), Plaintiff petitions the Court for a 14-day time extension from the time Defendant files a motion which complies with this Court's rules in which to file his response.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff hereby respectfully requests this Court:

- A. Strike Defendant's filing Docket No. 104 and require it to file a motion complying with the Court's rules.
- B. Extend Plaintiff's deadline to file its reply to a date 14 days after Defendant correctly files a motion for summary judgment.

DATED this 6th day of December 2023.

The motion to strike Defendant's filing is DENIED. The motion for an extension is GRANTED in part. By **December 8, 2023**, Plaintiff shall provide Defendant with an electronic copy, in Microsoft Word format, of the Rule 56.1 statement. Plaintiff shall file its opposition by **December 13, 2023**. Defendant shall file its reply by **December 22, 2023**. No further extensions will be granted absent extraordinary circumstances.

The Clerk of Court is respectfully directed to close the motion at Dkt. 106.

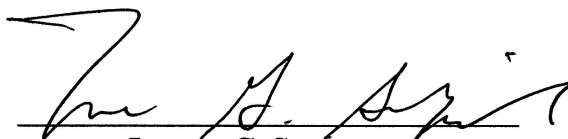
Dated: December 7, 2023
New York, New York

FORD & HUFF LC

/s/ Adam Ford

Adam Ford (NYB #4115531)

Attorney for Plaintiff


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE